Article 31: Disclosure Available To Obtain Material in Opposition to Motion Attacking Personal Jurisdiction

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determining what attorney's fees an insured is entitled to when his
indemnitor leaves him. "Leaving him," the court implied, occurs
when the insurer, upon notice of suit, fails to defend its client
within a reasonable time thereafter. In such a situation, the insurer
will be liable for all reasonable attorney's fees in relation to suits
actively pending against its insured.

**ARTICLE 31—DISCLOSURE**

**Article 31:** Disclosure available to obtain material in
opposition to motion attacking personal jurisdiction.

In *Cronin v. New England Storage Warehouse Co.*, the
plaintiff sought damages for breach of contract. In his answer the
defendant alleged, *inter alia*, that the court had no personal jurisdic-
tion; and in a letter to the plaintiff the defendant made it known
that he was going to move for a dismissal on that ground. The
plaintiff then served written interrogatories upon the defendant
concerning the question of jurisdiction; and the defendant moved
for a protective order striking the interrogatories. The
defendant on the basis of pre-CPLR cases claimed that disclosure was not
available to obtain material to oppose a motion attacking the court's
jurisdiction. The court held that under the CPLR the remedy of
disclosure is definitely available on a motion attacking jurisdiction
of defendant's person, and is available in the case even though the
jurisdictional motion is not yet pending.

CPLR 3211(d) provides that if it appears, from affidavits sub-
mitt ed in opposition to a motion made under CPLR 3211(a) or
(b), that there are facts essential to justify the opposition, "the
court may ... order a discontinuance to permit ... disclosure
to be had. . . ." The decision in *Cronin* seems to fall within the
design of CPLR 3211(d) and the disclosure provisions of article 31. Much time and expense may be saved if the merit or lack
of merit of defendant's motion can be established prior to the
hearing of the motion.

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74 54 Misc. 2d 1088, 284 N.Y.S.2d 59 (Sup. Ct. Richmond County 1967).
75 CPLR 3103 provides for the issuance by the court of protective orders
regulating the use of disclosure in order to prevent prejudice to any of
the parties.
76 Norton v. Cromwell, 248 App. Div. 107, 290 N.Y.S. 707 (1st Dep't
1936); *In re Erlanger*, 231 App. Div. 70, 246 N.Y.S. 745 (1st Dep't
1930); Debrey v. Hanna, 182 Misc. 824, 45 N.Y.S.2d 551 (Sup. Ct. N.Y.
County 1943).
77 CPLR 3211(a)(8) allows a person to move for a dismissal on the
ground of lack of personal jurisdiction.
78 "The clear intendment of the rules is to permit disclosure to elicit
pertinent evidence concerning proof of issues involving jurisdictional ques-
tions." 54 Misc. 2d at 1088-89, 284 N.Y.S.2d at 60.